

IDEA Basics For Charter Schools

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Special Education Law 101

The basics of a very COMPLICATED body of law.

The Statute:

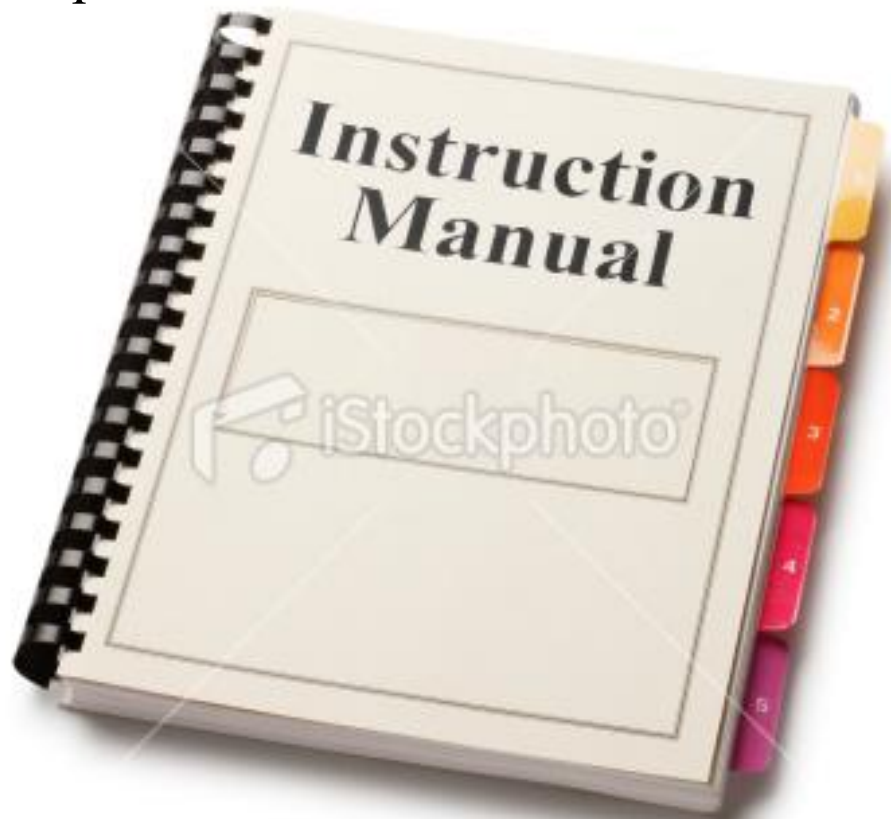
- **Individuals with Disabilities Education Act**
- 20 U.S.C. §1400 et seq.

PART B, ages 3-21



The Regulations

- 34 C.F.R. Part 300
- The “How To” book of Special Education.



Get Ready for Alphabet Soup!



The Purpose:

- To ensure that all children with disabilities age 3 through 21 have a Free Appropriate Public Education (FAPE) that emphasizes special education and related services designed to meet their unique needs in the least restrictive environment (LRE) according to the child's Individualized Education Plan (IEP).
- The provision of FAPE is a Federal mandate.
- The nondelegable, nonwaivable obligation to provide FAPE rests with the school district of residence.

What Do You Mean “Disabled?”

- In order to qualify for service and protection under the IDEA, children must:
 - Be comprehensively evaluated,
 - Meet eligibility criteria in one of the 13 IDEA disability categories, AND
 - Need special education as demonstrated by a documented adverse educational impact directly resulting from the identified disability.

IT IS A TWO PRONG TEST!

IDEA DISABILITY



NEED



IDEA ELIGIBILITY

What Are the IDEA Disability Categories?

34 C.F.R. §300.8

- Autism
- Cognitive Impairment (Mental Retardation)
- Deaf/Blind
- Emotional Disorder
- Hearing Impairment (Deafness)
- Learning Disabled
- Multiple Disabilities
- Orthopedic Impairment
- Other Health Impairment
- Speech-Language Impairment
- Traumatic Brain Injury
- Visual Impairment (Blindness)

13 Utah Disability Categories

- Autism
- Deaf-Blindness
- Developmental Delay
- Emotional Disturbance
- Hearing Impairment/Deafness
- Intellectual Disability
- Multiple Disabilities
- Orthopedic Impairment
- Other health Impairments
- Specific Learning Disability
- Speech/Language Impairment
- Traumatic Brain Injury
- Visual Impairment (Including Blindness)

Disabilities You Will Hear About . . .

Depression or Bi-Polar

**Attention Deficit
or ADHD**

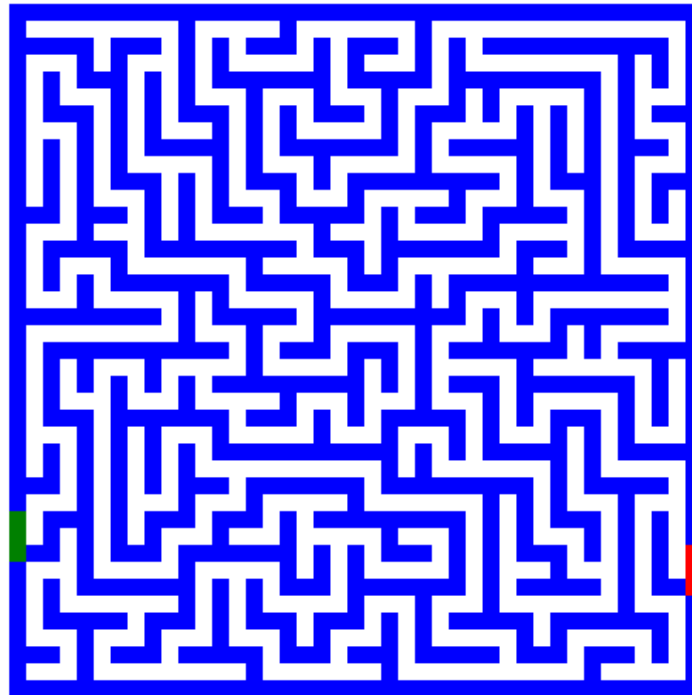
Conduct Disorder

**Reactive Attachment
Disorder or RAD**

How Does the Process Start?

3 Ways:

- Child Find
- Referral
- Parent Request



Child Find

34 C.F.R. §300.111

- Refers to the federal obligation of each state to “identify, locate, and evaluate” all children with disabilities, age birth through 21, residing in the state.
- Each school district must engage in child find activities to “identify, locate, and evaluate” children with disabilities located within its boundaries, typically through screening activities.
- The child find obligation matures when the school district suspects the child is a child with a disability and in need of special education.

Referral or Parent Request

34 C.F.R. §300.301

- Either a **school district** (public agency) or a **parent** may initiate a request for an initial evaluation.
- A **school district** typically refers a child for evaluation after the child's response to instruction and/or interventions is not sufficient to permit the child to make educational progress.
- **Parents may request an evaluation at any time, either verbally or in writing.** The school district must either:
 - Conduct the evaluation without delay, or
 - Issue formal Notice to the Parents regarding the reasons for the school district's denial.

Who is the Parent?

34 C.F.R. §300.30

Biological or adoptive Parent



Foster Parent



Guardian, BUT NOT THE STATE IF A
CHILD IS A WARD OF THE STATE.



Individual acting in place of the
parent with whom the child lives, or
is legally responsible for the child.



Surrogate parent.

Parent

- The biological or adoptive parent, when attempting to act as the parent under this part, and when more than one party is qualified to act as parent, **must be presumed** to be the parent UNLESS:
 - The biological or adoptive parent does not have legal authority to made educational decisions for the child, or
 - A judicial decree or order identifies a specific person to act as the parent or to make educational decisions on behalf of a child.

Who is NOT a Parent under the IDEA?

**County Case
Worker**

Attorney

**Probation
Officer**

**Guardian ad
Litem**

**Court Appointed
Special
Advocate**

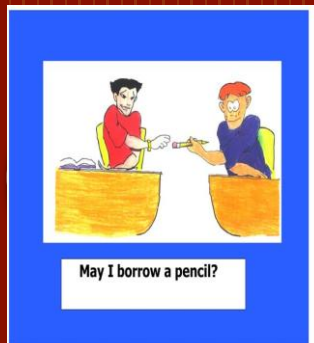
Once eligible . . .

- A child has a right to FAPE in the LRE as described in the IEP.
- FAPE – Free Appropriate Public Education: Defined by the United States Supreme Court to mean special education and related services that are **reasonably calculated to provide educational benefit** to the child.
- LRE – Least Restrictive Environment: To the maximum extent appropriate children with disabilities are educated with children who are nondisabled, and special classes, separate schooling, or other removal of children with disabilities occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

The LRE Continuum



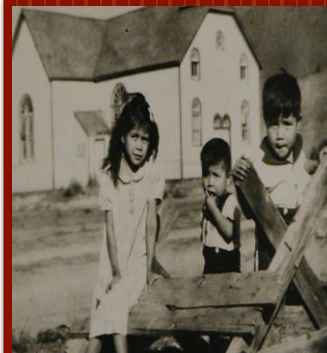
Regular
Classes



Separate
Classes



Separate
Schools



Residential
Settings



Hospital or
Homebound



Once eligible . . .

- An IEP must be developed. It is a written statement for a child with a disability that is developed by a child's IEP team that describes the specialized instruction, related services, supplementary aids and services, and modifications for the student.
- The IEP must be reviewed at least annually, or more frequently based on the child's needs.
- The IEP can be amended by agreement WITHOUT an IEP team meeting by agreement of the school and the parent.

Once eligible . . .

- The child has the right to an IEP that includes:
 - Measurable annual goals, including academic and functional goals, designed to:
 - Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general curriculum, and
 - Meet each of the child's **other educational needs** that result from the child's disability.

Once eligible . . .

- The child is served based on need, NOT disability category.
- Beginning with the IEP to be in effect when the child turns 16, the IEP must include appropriate measurable post secondary goals and transition services.
- The child, and the parent, are protected by procedural safeguards.

What Type of Safeguards?

- Parent Participation
- Prior Written Notice (PWN)
- Independent Education Evaluations (IEE)
- Right to resolve disputes through:
 - A state level complaint,
 - Mediation, and/or
 - A Due Process Hearing.

Once eligible . . .

- The child must be reevaluated every three years, or more frequently if:
 - The educational needs of the child warrant, or
 - If the child's parent or teacher requests a reevaluation.
- The reevaluation can be waived if the parent and school district agree that a reevaluation is unnecessary.

What Happens When . . .

- The student turns 18 years of age?
 - All parental rights transfer to the student unless under guardianship.
- A student is detained or incarcerated?
 - All of the protections under the IDEA apply UNLESS:
 - The student is incarcerated in an adult prison AND was not identified as having a disability prior to incarceration.
- A parent revokes her consent for special education?
 - All services and protections must cease. READ ON. . .

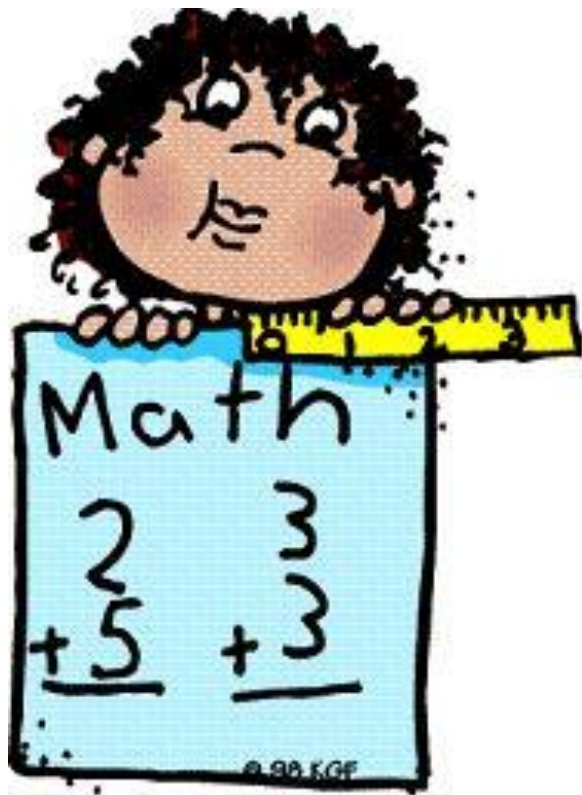
TOP TEN POINTERS

Things to remember in special education.



#10 Initial Evaluation & Placement

Comprehensive Evaluation



Terrific
Test
Takers!

Part B

- Each public agency must conduct a **full and individual initial evaluation** before the initial provision of special education and related services.
- *See 34 C.F.R. §300.301.*

Initial Evaluation

- The public agency must ensure that the child is assessed in all areas related to the suspected disability, including if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.
- *See 34 C.F.R. §300.304(c)(4).*

Comprehensive Requirement

- In evaluating a child with a disability, the public agency must ensure that the evaluation is sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category in which the child has been classified.
- *See 34 C.F.R. §300.304(c)(6).*

Comprehensive Requirement

- *D.B. v. Bedford County Sch. Bd.*, 54 IDELR 190 (W.D.Va. 2010).
- A Virginia district failed to thoroughly evaluate and appropriately place a student with ADHD when it glossed over whether he also had a SLD.
- Because the district's flawed evaluation led to an IEP that did not target the student's needs, the district denied him FAPE.
- After finding the student eligible as OHI, the IEP team placed the student in inclusion classes for four consecutive years. He failed to achieve any reading goals.
- The parent alleged in a due process complaint that the district's evaluation was inadequate.
- The court agreed. "[T]he IEP could not accurately be described as based on [the student's] 'individual' needs if he were evaluated on the basis of this mistaken comparison."
- The court ordered the district to reimburse the parent for private school tuition.

Limitation

- The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.
- *See 34 C.F.R. §300.302.*

What is. . .

Special Education

- Means **pecially designed instruction**, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and other settings.
- *See 34 C.F.R. §300.39(a).*

Related Service

- Means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education.
- *See 34 C.F.R. §300.34.*

What is Specially Designed Instruction?

- Specially designed instruction means adapting, as appropriate to the needs of an eligible child, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability, and ensure access to the general curriculum.

Limitation

- If it is determined, through an appropriate evaluation, that a child has one of the disabilities identified, **but only needs a related service and not special education**, the child is not a child with a disability under this part.
- *See 34 C.F.R. 300.8(a)(2).*

Limitation

- A child **must not** be determined to be a child with a disability under this part if the child does not otherwise meet the eligibility criteria under §300.8(a).
- *See 34 C.F.R. §300.306(b)(2).*

**IDEA
Disability**



**Need for
Special Ed.**



**IDEA
Eligible**

Reevaluation

- A reevaluation must be conducted
 - If the educational or related service needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
 - If the child's parent or teacher requests a reevaluation.
- Limitation: A reevaluation
 - May occur not more than once a year, unless the parent and the public agency agree otherwise; and
 - Must occur at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary.
 - *See 34 C.F.R. §300.303*

What Is a Reevaluation?

- Once a child has been fully evaluated, a decision has been rendered that a child is eligible for services under the Act, and the required services have been determined, **any subsequent evaluation** of a child would constitute a reevaluation.
- *See 71 Federal Register 46640*

#9 Consent & Revocation

If this
happens
when you
ask for
consent . . .



What is Consent?

- Consent means that —
 - The parent has been fully informed of all information relevant to the activity for which consent is sought;
 - The parent understands **and agrees in writing** to the carrying out of the activity for which his or her consent is sought, and
 - The parent understands that the granting of consent is voluntary.
 - *See 34 C.F.R. §300.9*

When Is Consent Required?

- At a minimum, consent is required:
 - Prior to the initial evaluation;
 - Prior to the initial provision of special education services; and
 - Prior to any reevaluation.
- *See 34 C.F.R. §300.300*

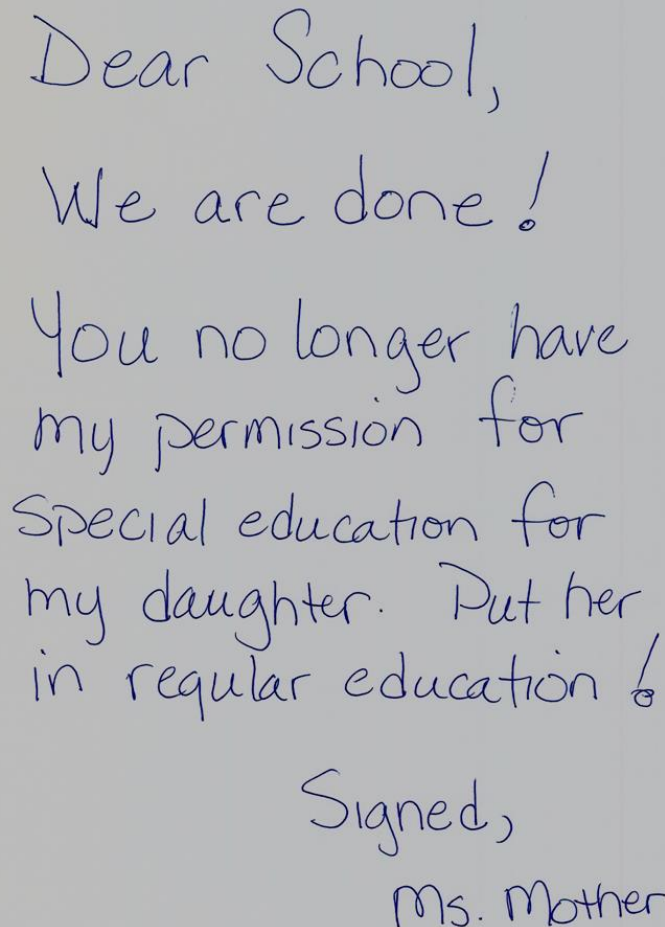
Revocation

- If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency--
 - May not continue to provide special education and related services to the child, **BUT** must provide prior written notice in accordance with §300.503 before ceasing the provision of special education and related services;

Revocation

- May **NOT** use the dispute resolution procedures in subpart E of this part, including mediation or due process;
- Will not be considered to be in violation of the requirement to make FAPE available to the child; **AND**
- Is not required to convene an IEP team meeting or develop and IEP for the further provision of special education and related services.
- *See 34 C.F.R. §300.300 (2008 Amendments)*

If you receive this . . .

A photograph of a handwritten note on lined paper. The text is written in blue ink and reads: "Dear School, We are done! You no longer have my permission for Special education for my daughter. Put her in regular education!" followed by "Signed, Ms. Mother".

Dear School,
We are done!
You no longer have
my permission for
Special education for
my daughter. Put her
in regular education!
Signed,
Ms. Mother

- 1st—Issue Prior Written Notice regarding the proposed change.
- 2nd— After a reasonable time, stop providing ALL services, including IEP accommodations, transportation, and special education.
- 3rd—Treat the student as a general education student.
- 4th — Continue with the district's ongoing child find responsibilities.

Remember . . .



- The school is not required to amend the student's record to eliminate references to special education.
- Any subsequent request for evaluation would be treated as a new referral.
- Any subsequent evaluation would be considered an initial evaluation.
- Keep a detailed record!

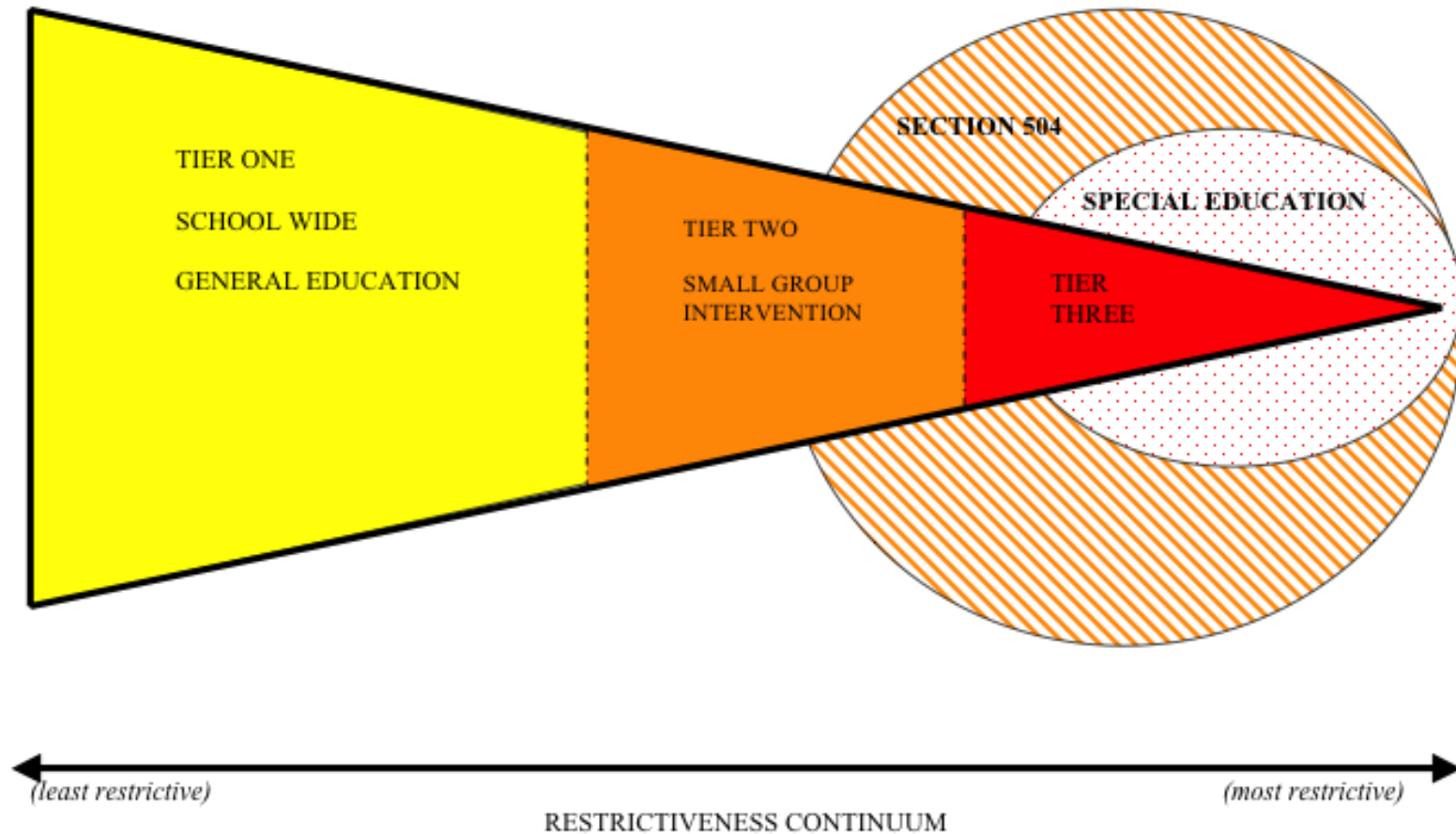
#8

Child find and RTI

- 34 C.F.R. §300.111: All children with disabilities residing in the State, **and** who are in need of special education and related services are identified, located and evaluated.



DUE PROCESS IMPLICATIONS FOR A TIERED APPROACH



What about Child Find and RTI?

Question: Must an LEA evaluate a child upon the request of the parent at any time during the RTI process?

Answer: If the LEA agrees with the parent that the child may be a child who is eligible for special education services, the LEA must evaluate the child.

What about Child Find and RTI?

Question: May an LEA require that all children suspected of having a SLD first be assessed using an RTI process before an eligibility determination may be made?

Answer: If an LEA is using RTI for all its students, it may require an evaluation team to review data from an RTI process in making eligibility determinations.

What about Child Find and RTI?

Question: May a parent request an initial special education evaluation at any time during the RTI process?

Answer: A parent may request an evaluation at any time. If an LEA declines the parent's request for an evaluation, the LEA must issue a prior written notice per section 503(a)(2). The parent can challenge the denial by requesting a due process hearing.

What about Child Find and RTI?

However, parents can request an evaluation at any time, and the public agency must either obtain consent to evaluate and begin the evaluation, or if the public agency declines the parent's request, issue a prior written notice.



What about Child Find and RTI?

When implementing an evaluation process based on a child's response to scientific, research-based intervention, the regulations require that a "public agency must promptly request parental consent to evaluate a child" if the "child has not made **adequate** progress after an **appropriate** period of time."

Section 300.309(c).

Now Have You Found Them?

- What is **adequate** progress after an **appropriate** period of time?
- How many interventions are enough?



How Many Interventions Are Too Much?

We are just beginning to learn the answer to this question. The RTI cases are making their way through the courts, refining our understanding of the federal regulations and expectations for schools.

- *El Paso Indep. Sch. Dist. v Richard R.*, 50 IDELR 256 (W.D. Tex. 2008).
- The district maintained it fulfilled its child find obligations by providing interventions recommended by the SAT.
- The interventions did not demonstrate positive academic benefits.
- The court concluded that by failing to evaluate the student in a timely manner, the district violated its child find obligations.

How Many Interventions Are Too Much?

- *A.P. v. Woodstock Bd. Of Ed.*, 50 IDELR 275 (D. Conn. 2008).
- Because an elementary school student made progress with the use of general education interventions, the school district did not err in failing to refer him for a special education evaluation.
- Although the student had some difficulties in the classroom, the evidence showed that he responded well to interventions.



What made the difference?

Evidence of progress!

#7 Measureable Progress

- 34 C.F.R. §300.320(a)(2) requires that every IEP include a statement of measurable annual goals, including academic and functional goals, designed to: --
 - Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and meet each of the child's other educational needs that result from the child's disability. --
 - For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives.

Measurable goals lead to Measuring progress

- 34 C.F.R. §300.320(a)(3) requires that every IEP include a description of: --
- How the child's progress toward meeting the annual goals will be measured, and
- When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided.

Progress

- A finding that a child's goals are vague or immeasurable generally leads to a ruling that the district denied FAPE. See, e.g., *Independent Sch. Dist. No. 701 v. J.T. by C.L.*, 45 IDELR 92 (D. Minn. 2006).
- The court ruled the IEP stated that he would read, write and do math in such general terms, it was unclear what skills he should acquire, resulting in an "absolute lack of evidence that any academic progress was made."

Progress

- The court ruled legally measurable goals must have "sufficiently objective criteria" to measure progress.
- *Kuszewski v. Chippewa Valley Schs.*, 38 IDELR 63 (6th Cir. 2003).

Progress

Draper v. Atlanta Ind. Sch. System, 49 IDELR 211 (11th Cir. 2008).

- A Georgia district that used an ineffective reading program for three years despite a student's failure to make progress had to pay a hefty price for its decision.
- The 11th Circuit affirmed an award of compensatory education that required the district to pay up to \$38,000.00 a year for the student's private placement.
- The 11th Circuit pointed out that nothing in the IDEA precludes an award of compensatory education in the form of private placement.
- Furthermore, the district continued using an ineffective reading program for three years despite the student's clear lack of progress.
- Given the district's prolonged failure to provide the student FAPE, the private placement awarded by the district court was appropriate.

Progress

- *D.S. v. Bayonee Bd. Of Ed.*, 54 IDELR 141 (3rd Cir. 2010).
- Evidence that a ninth-grader with cognitive difficulties performed well below grade level on achievement tests and struggled to understand teachers in his special education classes helped convince the 3rd Circuit that his IEP was inadequate.
- "Our reading of Rowley leads us to believe that when ... high grades are achieved in classes with only special education students set apart from the regular classes of a public school system, the grades are of less significance than grades obtained in regular classrooms."
- Despite his good grades, the student performed well below grade level in reading, writing and math. Achievement tests indicated that he had borderline to low-average cognitive functioning.
- The IEP data did not demonstrate progress.

Progress

- *J.D. v. Lakeland Cent. Sch. Dist.*, 54 IDELR 95 (S.D. NY 2010).
- Evidence that a student with learning disabilities made progress under his sixth-grade IEP undermined his parents' attempt to recover the cost of his private placement from a New York district.
- The District Court held that the student's eighth-grade IEP, which offered more intensive reading services, was reasonably calculated to provide an educational benefit.
- The parents claimed that the student failed to make meaningful progress in sixth grade. The court disagreed. Although the student had ongoing struggles in reading and writing, the court pointed out that the student demonstrated difficulty with only one out of 10 reading goals. "Other than spelling, with which he had great difficulty, [the student] achieved all goals set up in the [sixth-grade IEP] for his writing skills."

Progress Monitoring Data can be Your Best Friend. . .



Or Your Worst Enemy!



#6 Transfer Students

- IN STATE TRANSFERS: If a child with an IEP transfers to a new public agency in the same state and enrolls in a new school within the same school year, the new public agency must provide FAPE to the child, **including comparable services to those in the old IEP**, until the new public agency either —
 - Adopts the child's IEP from the previous public agency; or
 - Develops, adopts, and implements a new IEP that meets the applicable requirements in regulation.
- *See 34 C.F.R. §300.323(e)*

Transfer Students

- OUT OF STATE TRANSFERS: If a child with an IEP transfers to a public agency in a new state, and enrolls in a new school **within the same school year**, the new public agency must provide the child FAPE, **including services comparable** to those in the child's IEP from the previous school, until the new public agency –
 - Conducts and evaluation, if necessary; **and**
 - Develops, adopts, and implements a new IEP that meets the requirements in the regulations.
- *See 34 C.F.R. §300.323(f)*

Transfer Students

- OUT OF STATE TRANSFERS:
- “The evaluation conducted by the new public agency would be to determine if the child is a child with a disability and to determine the educational needs of the child.”
- “Therefore, the evaluation would not be a reevaluation, but would be an initial evaluation by the new public agency, which would require parent consent.”
- *See 71 Federal Register 46682*

What Are Comparable Services?

- “We do not believe it is necessary to define ‘comparable services’ in these regulations because the Department interprets ‘comparable’ to have the plain meaning of the word, which is ‘similar’ or ‘equivalent.’”
- “Therefore, when used with respect to a child who transfers to a new public agency in the same State (or from another State), ‘comparable’ services means services that are ‘similar’ or ‘equivalent’ to those that were described in the child’s IEP from the previous public agency, as determined by the child’s newly designated IEP team in the new public agency.”
- *71 Federal Register 46681*

Recent OSEP Guidance

- OSEP's website: <http://idea.ed.gov>
- OSEP's Q & A on IEPs released June 2010.
 - A-1. What if a student whose IEP has not been subject to a timely annual review, but who continues to receive special education and related services under that IEP, transfers to a new public agency in the same State? Is the new public agency required to provide a free appropriate public education (FAPE) from the time the student arrives?
 - A-2. What options are available when an out-of-state transfer student cannot provide a copy of his/her IEP, and the parent identifies the "comparable" services that the student should receive?
 - A-3. Is it permissible for a public agency to require that a student with a disability who transfers from another State with a current IEP that is provided to the new public agency remain at home without receiving special education and related services until a new IEP is developed by the new public agency?
 - A-4. What is the timeline for a new public agency to adopt an IEP from a previous public agency or to develop and implement a new IEP?
 - A-5. What happens if a child with a disability who has an IEP in effect transfers to a new public agency or LEA in a different State and the parent refuses to give consent for a new evaluation?

#5 IEP Team Attendance

34 C.F.R. §300.321

The IEP Team must include:

- Parents;
- Not less than one Regular Education Teacher **of the child**, if the child is, or may be participating, in the regular education environment;
- Not less than one Special Education Teacher **of the child**;
- A representative of the public agency who is
 - Qualified to provide or supervise instruction,
 - Is knowledgeable about the general education curriculum, **and**
 - Is knowledgeable about the school's resources;
- An individual who can interpret the instruction implications of evaluation results; and
- Whenever appropriate, the child with a disability.

IEP Teams

34 C.F.R. §300.321

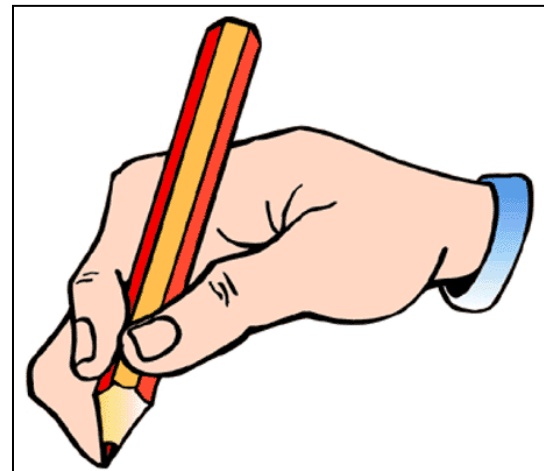
The child must be invited if the IEP Team will consider postsecondary goals and transition services.



IEP Team Attendance

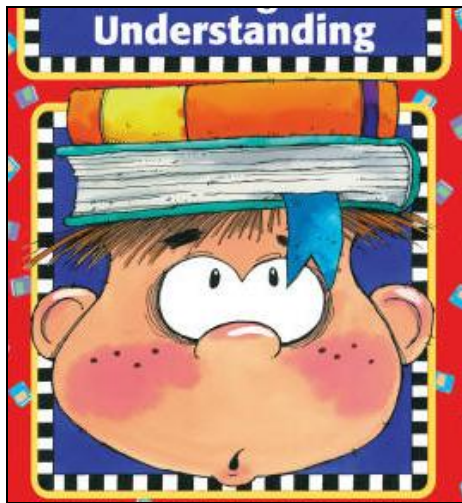
34 C.F.R. §300.321

A mandatory member of the IEP Team member is **not required** to attend an IEP meeting, in whole or in part, **if** the parent and school **agree, in writing**, that the attendance of the member is not necessary because the member's area of the curriculum is **not** being modified or discussed at the meeting.



IEP Team Attendance

34 C.F.R. §300.321



Agreement in this section **is not** the same as consent, but instead refers to an **understanding** between the parent and the LEA.

See Comments on page 46673.

IEP Team Attendance

34 C.F.R. §300.321

- A mandatory IEP Team member **may be excused** from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification or discussion of the member's area of the curriculum if:
 - The parent, **in writing**, and the school **consent** to the excusal, **and**
 - The member **submits, in writing, input** into the development of the IEP **prior** to the meeting.

IEP Team Attendance

34 C.F.R. §300.321

- **Consent** in this section means **“informed consent.”**
- The school must provide the parent with appropriate and sufficient information to ensure that the parent fully understands that the parent is consenting to excuse an IEP team member from an IEP Team meeting.

See Comments on page 46674.



Parent Participation

34 C.F.R. §300.322

- Each public agency must take steps to ensure that parents are present at each IEP Team meeting, or are afforded the opportunity to participate, including—
 - Notifying parents of the meeting early enough to ensure an opportunity to attend, and
 - Scheduling the meeting at a mutually agreed time and place.

Parent Participation

34 C.F.R. §300.322

Other methods to ensure parent participation include individual or conference telephone calls.

Use caution, however. . .



Caution . . .

- *Drobnicki v. Poway Unified Sch. Dist.*, 53 IDELR 210 (9th Cir. 2009).
- A district's lackluster efforts to include a teenager's parents in an IEP meeting could have serious financial consequences.
- Concluding that the procedural violation amounted to a denial of FAPE, the 9th Circuit reversed a decision in the district's favor and remanded the case with instructions to award appropriate relief.
- The dispute centered on the scheduling of the IEP meeting. The district scheduled the meeting without asking the parents about their availability.
- When the parents informed the district that they were unavailable on the scheduled date, the district did not contact the parents to arrange an alternative. Rather, the district offered to let the parents participate by speakerphone.
- The 9th Circuit explained that the offer did not fulfill the district's affirmative duty to schedule the IEP meeting at a mutually agreed upon time and place. "The use of [a phone conference] to ensure parent participation is available only if neither parent can attend an IEP meeting."

Parent Participation

34 C.F.R. §300.322

- A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend.
- The public agency must keep a record of
 - Telephone calls made or attempted,
 - Copies of correspondence, and
 - Detailed records of visits.



Recent OSEP Guidance

- OSEP's website: <http://idea.ed.gov>
- OSEP's Q & A on IEPs released June 2010.
 - C-1. May the representative of the public agency be excused from attending an IEP Team meeting?
 - C-2. May more than one member of an IEP Team be excused from attending the same IEP Team meeting?
 - C-3. Must the public agency receive consent from a parent to excuse multiple regular education teachers if at least one regular education teacher will attend an IEP Team meeting?
 - C-4. If the designated regular education teacher is excused from attending the IEP Team meeting, would an alternate regular education teacher be required to attend?
 - C-5. Is there a specific timeline in the IDEA for public agencies to notify parents of a request to excuse an IEP Team member from attending an IEP Team meeting? May a State establish a timeline for this purpose?
 - C-6. May State law or regulations regarding IEP Team membership and IEP Team meeting attendance requirements exceed those of the IDEA?

#4 Unilateral changes

- A district must implement an IEP with all of its required components. 20 U.S.C. §1414(d)(2)(A).
- FAPE means special education and related services which are provided in conformity with an IEP that meets federal requirements. 34 C.F.R. §300.17.
- The unique needs of a student with a disability encompass more than a mastery of academic subjects. Unique needs are broadly construed to include academic, social, health, emotional, physical and vocational needs, all as relating to the provision of preschool, elementary and secondary education services. See *County of San Diego v. California Special Education Hearing Office*, 24 IDELR 756 , 760 (9th Cir. 1996).

In Conformity With the IEP

- Once an IEP has been drafted and implemented, services must be provided.
- Although not a guarantee of performance, it serves as a quasi-contract for services.
- Districts will be held accountable for the services in an IEP.

Unilateral Changes

- But see *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 47 IDELR 182 (9th Cir. 2007)
- A district did not have to provide compensatory education to a 13-year-old student with severe autism despite its failure to strictly implement the student's IEP goals with regard to math instruction, behavior management and self-contained placement. Determining that the implementation failures were not material, the 9th Circuit affirmed a judgment for the district on the student's FAPE claim.
- The 9th Circuit adopted the reasoning of the 5th and 8th Circuits, concluding that a district's failure to implement an IEP must be material. *Houston Indep. Sch. Dist. v. Bobby R.*, 31 IDELR 185 (5th Cir. 2000); *Neosho R-V Sch. Dist. v. Clark*, 38 IDELR 61 (8th Cir. 2003).

Refusal to Provide Services

- A teacher cannot refuse to provide a service the district agrees to provide in the IEP. The determination of what special education and related services should be provided to a child with a disability, where it should be provided and who should provide it are educational issues, not labor-management issues. The provisions of a collective bargaining agreement cannot justify a district's failure to provide students with the rights and protections guaranteed under the IDEA. *Letter to Williams*, 21 IDELR 73 (OSEP 1994).
- Teachers who refuse to perform an accommodation may be found liable. See, e.g., *Doe v. Withers*, 20 IDELR 422 (W. Va. 1993) A teacher was liable under Section 1983 for \$5,000 in compensatory damages and \$10,000 in punitive damages because he refused to provide oral testing for a student with a disability.

#3 Prior Written Notice

Purpose:

- It is an alert to parents of the following:
 - A change is about to take place, or
 - The school has refused their request, and
 - The parent's now have the right to object to the district's proposal or refusal.



Prior Written Notice

34 C.F.R. 300.503

- Must be given to parents a reasonable time before the public agency:
- Proposes to initiate or change the IDENTIFICATION, EVALUATION, OR EDUCATIONAL PLACEMENT, OR THE PROVISION OF FAPE, or
- Refuses to initiate or change the IDENTIFICATION, EVALUATION OR EDUCATIONAL PLACEMENT, OR THE PROVISION OF FAPE.

Prior Written Notice

34 C.F.R. 300.503

- Contents of the Notice:
 - Description of the action proposed or refused by the agency;
 - An explanation of why the agency proposes or refuses to take the action;
 - A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
 - A statement of the parent's procedural safeguards;
 - Sources for the parents to contact;
 - A description of other options considered and why those options were rejected; and
 - A description of other relevant factors.

Prior Written Notice

34 C.F.R. 300.503

- Every time you **propose** to:
 - Evaluate a student
 - Amend and IEP
 - Change a placement
 - Change eligibility
 - Change FAPE
- Every time you **refuse** to:
 - Evaluate a student
 - Amend and IEP
 - Change a placement
 - Change eligibility
 - Change FAPE

NEWS FLASH!!

Now Hear This



- Prior Written Notice must be given to a parent
- **AFTER** revocation of consent,
- **BUT**
- **BEFORE** discontinuing services.

MANDATORY!!!

#2 Transportation

- The related service of transportation includes transportation to and from school and between schools, as well as travel in and around school buildings.
- It also includes specialized equipment, such as special or adapted buses, lifts and ramps, if required to provide special transportation.
- *See 34 C.F.R. §300.34(c)(16).*

Transportation

- The transportation term, and obligation, is broad. A child's IEP team is responsible for determining whether transportation between school and other locations is necessary in order for the child to receive FAPE.
- If a child's IEP team determines that supports or modifications are needed in order for the child to be transported so that the child can receive FAPE, the child must receive the necessary transportation and supports at no cost to the parents.
- *See 71 Fed. Reg. 46576.*

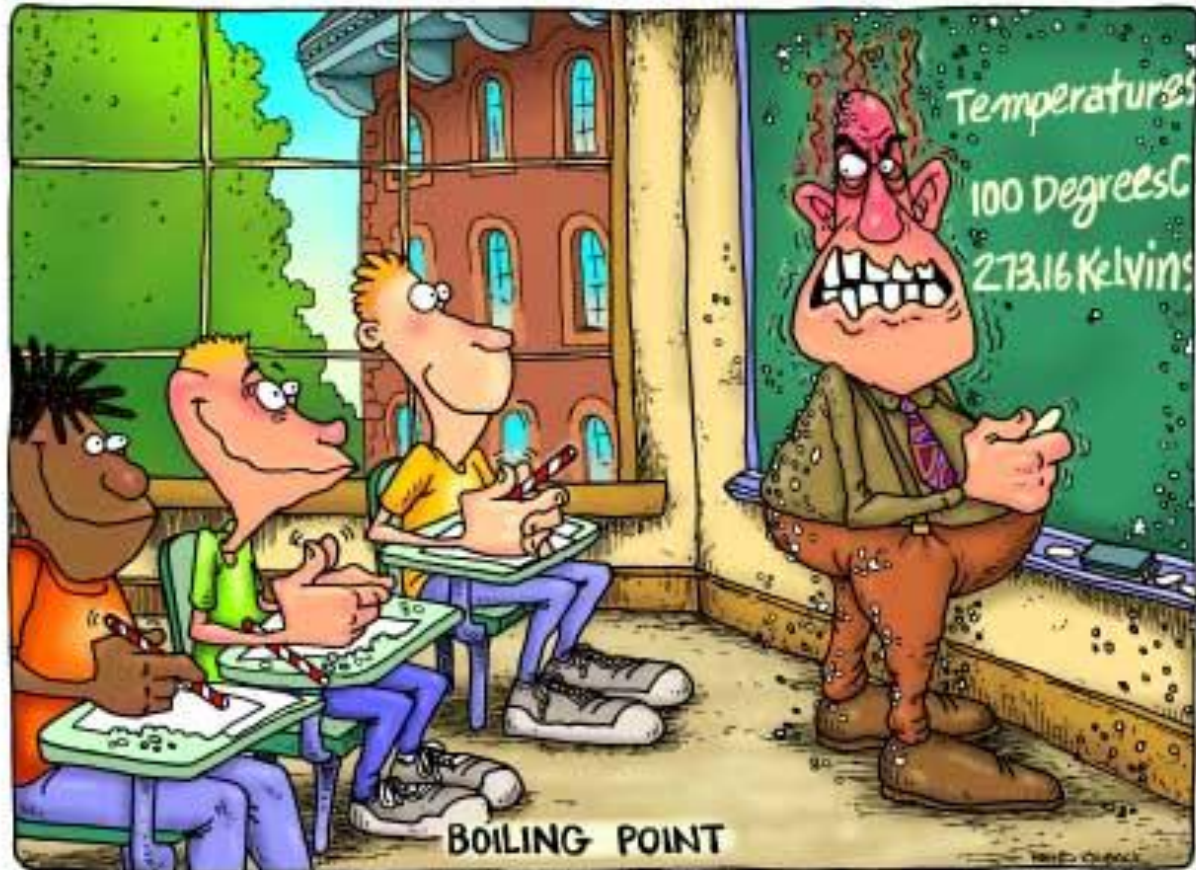
Recent OSEP Guidance

- OSEP's website: <http://idea.ed.gov>
- OSEP's Q & A on Transportation released November 1, 2009.
 - A-1: What transportation services are available for students eligible for special education and related services under the IDEA?
 - A-2: Who determines whether transportation services are required and how those services should be implemented?
 - A-3: If a child's IEP identifies transportation as a related service to be provided to the child, what are strategies that can be used to provide that service?
 - A-4: Do the transportation provisions in mean that an LEA is responsible for transporting children with disabilities to and from the locations where the students receive special education and related services, even if the LEA has to redirect the transportation routes or provide an aide for safety?
 - B-1: If a child with a disability spends a significant amount of time being transported to and from school, as well as to and from another location to receive special education and related services, is the child entitled to receive additional school time to make up for the time lost in transportation?
 - C-1: When does the IDEA require climate-controlled transportation for children with disabilities?

Recent OSEP Guidance

- OSEP's website: <http://idea.ed.gov>
- OSEP's Q & A on Transportation released November 1, 2009.
 - D-1: What information should an LEA give to school bus drivers to ensure that the drivers understand the confidentiality protections of children who are transported?
 - E-1: When does a child with a disability have a right to transportation to and from school-related activities that occur outside of normal school hours, such as community service activities that are required by the school?
 - F-1: When is an LEA obligated to provide transportation for a preschool child with a disability between private day care and the child's preschool?
 - G-1: Must an LEA provide appropriate information and assistance to the parents of a child with a disability who are seeking reimbursement for mileage expenses for transportation the IEP Team included in the child's IEP?
 - H-1: If transportation is included in the IEP for a child with a disability who has documented behavioral concerns on the bus, but not at school, when may a school district suspend the child from the bus for behavioral issues and not provide some other form of transportation to and from school?

#1 Discipline Provisions



DISCIPLINE ZONES

FAPE FREE ZONE

§300.530(b)

COMPUTE:

DAYS OF SUSPENSION
(Any removal by any
creative name, even
portions of a day)

+

DAYS OF ISS
(Unless FAPE and
opportunity to participate
in general curriculum
with nondisabled peers
are provided)

=

Discipline Without Regard
for Disability
i.e.

Same for all Students!

**IF REMOVAL(S)
EXCEED 10 SCHOOL
DAYS, PROCEED TO
NEXT ZONE**

CHANGE-OF-PLACEMENT ZONE

§300.536

SCHOOL MUST ANALYZE:

1. If the removal is greater than 10 consecutive school days, **OR**
2. If the series of removals constitute a pattern
 - Because the series total more than 10 school days in a school year,
 - Because the student's behavior is substantially similar to previous incidents that resulted in the series of removals, **OR**
 - Because of additional factors like the length of each removal, total amount of time, and proximity of removals to one another.

**IF NO C-O-P, THEN PROCEED TO THE
ORANGE ZONE**

IF C-O-P, THEN IEP TEAM MUST:

1. Provide Procedural Safeguards Notice
2. Conduct a Manifestation Determination within 10 school days of decision to change placement.

**IF NO MANIFESTATION, THEN PROCEED TO THE
BLUE ZONE**

IF BEHAVIOR IS A MANIFESTATION, THEN

- Conduct FBA
- Implement or modify a BIP, **AND**
- Return student to previous placement.

DISCIPLINE ZONE

§300.530(d)

SCHOOL AND TEACHER(S) DETERMINE:

What educational services the student is to receive so as to enable the student to:

1. Continue to participate in the general education curriculum, although in another setting, **AND**
2. Progress toward meeting the goals set out in the student's IEP.

IEP TEAM MUST DETERMINE:

What educational services the student is to receive so as to enable the student to:

1. Continue to participate in the general education curriculum, although in another setting, **AND**
2. Progress toward meeting the goals set out in the student's IEP, **AND**
3. Receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.

**THIS IS THE STAY PUT PLACEMENT IF
CHALLENGED!**

§300.533

Does not apply in special circumstances when weapons, drugs, or serious bodily injury are involved. See §300.530(g).

THE 10 PREMISES

PREMISE #1

§300.530(b)

Schools **must** count the number of days a special education student is removed from school. Any removal, by any name, must be counted, including In-School Suspension, unless the student is afforded the opportunity to continue to receive FAPE, and appropriately participate in the general curriculum, and to participate with nondisabled children to the same extent as their educational placement.

PREMISE #2

§300.530(b)

Removals that total fewer than 10 school days are free. Schools may discipline the student without regard to disability to the same extent as any general education student.

PREMISE #3

§300.530(b)

Schools **must** provide special education services to a student after 10 free school days. **Always.** Who determines the location and type of service will depend on several factors including whether:

- The removal constitutes a change of placement per 300.536,
- The behavior for which the student is being disciplined is a manifestation of the student's disability per 300.530(e),
OR
- Special circumstances exist per 300.530(g).

PREMISE #4

§300.536

- Change of placement (C-O-P) analysis **must** occur when removals total more than 10 school days in a school year.
- Removals exceeding 10 consecutive school days are **always** a C-O-P.
- Patterns of removals exceeding 10 cumulative days may be a C-O-P, considering:
 - Length of each removal,
 - Total amount of time removed, AND
 - Proximity of the removals to one another.

PREMISE #5

§300.530(d)

- If the additional removals beyond 10 school days are not a C-O-P, then the school and at least one teacher determine what educational services the student is to receive to enable the student to
 - Continue to participate in the general education curriculum, although in another setting, **AND**
 - Progress toward meeting the goals set out in the student's IEP.

PREMISE #6

§300.530(e)

- If the removal is a C-O-P, then the student's IEP team (relevant members) must conduct a manifestation determination within 10 school days of the decision to change the student's placement. The team must determine whether:
 - The student's behavior was caused by, or had a direct and substantial relationship to, the child's disability, **or**
 - If the student's behavior was a direct result of the school's failure to implement the IEP. (If yes, immediately remediate those deficiencies.)

PREMISE #7

§300.530(e)

- If the behavior **is** a manifestation of the student's disability, then either
 - Conduct a functional behavioral assessment (unless previously conducted) and implement a behavior intervention plan, **OR**
 - If a behavior intervention plan has already been developed, review and revise as necessary to address the behavior, **AND**
 - Return the student to his/her previous placement prior to removal (unless special circumstances exist).

PREMISE #8

§ 300.530(c)

- If the behavior is **not** a manifestation of the student's disability, then the school may discipline the student in the same manner and for the same amount of time as a nondisabled student but must provide services as determined by the IEP team to allow the student to
 - Continue to participate in the general education curriculum, although in another setting, **AND**
 - Progress toward meeting the goals set out in the student's IEP, **AND**
 - Receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.

PREMISE #9

§300.530(g)

- In special circumstances, if the student
 - Brings or possesses a weapon at school, on any school property, or at school or State-sponsored functions;
 - Knowingly possesses or uses illegal drugs or sells or attempts to buy a controlled substance while at school, on any school property, or at school or State-sponsored functions; **OR**
 - Inflicts serious bodily injury on another person while at school, on any school property, or at school or State-sponsored functions.
- The student may be removed to an interim alternative educational setting (IAES) for not more than 45 school days.

Controlled Substances

21 U.S.C. §812(c)

There are five schedules of controlled substances, to be known as schedules I, II, III, IV, and V.



There are many illegal drugs.



Dangerous Weapon

18 U.S.C. 930(g)(2)

The term "dangerous weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length.

Serious Bodily Injury

18 U.S.C. §1365(h)(3)

- “Serious bodily injury” means bodily injury that involves—
 - A substantial risk of death;
 - Extreme physical pain;
 - Protracted and obvious disfigurement; or
 - Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

PREMISE #10

§300.533

For all disputes surrounding disciplinary removals, the stay-put placement is the interim alternative setting, or the location of the disciplinary removal, unless the parent and school agree otherwise.

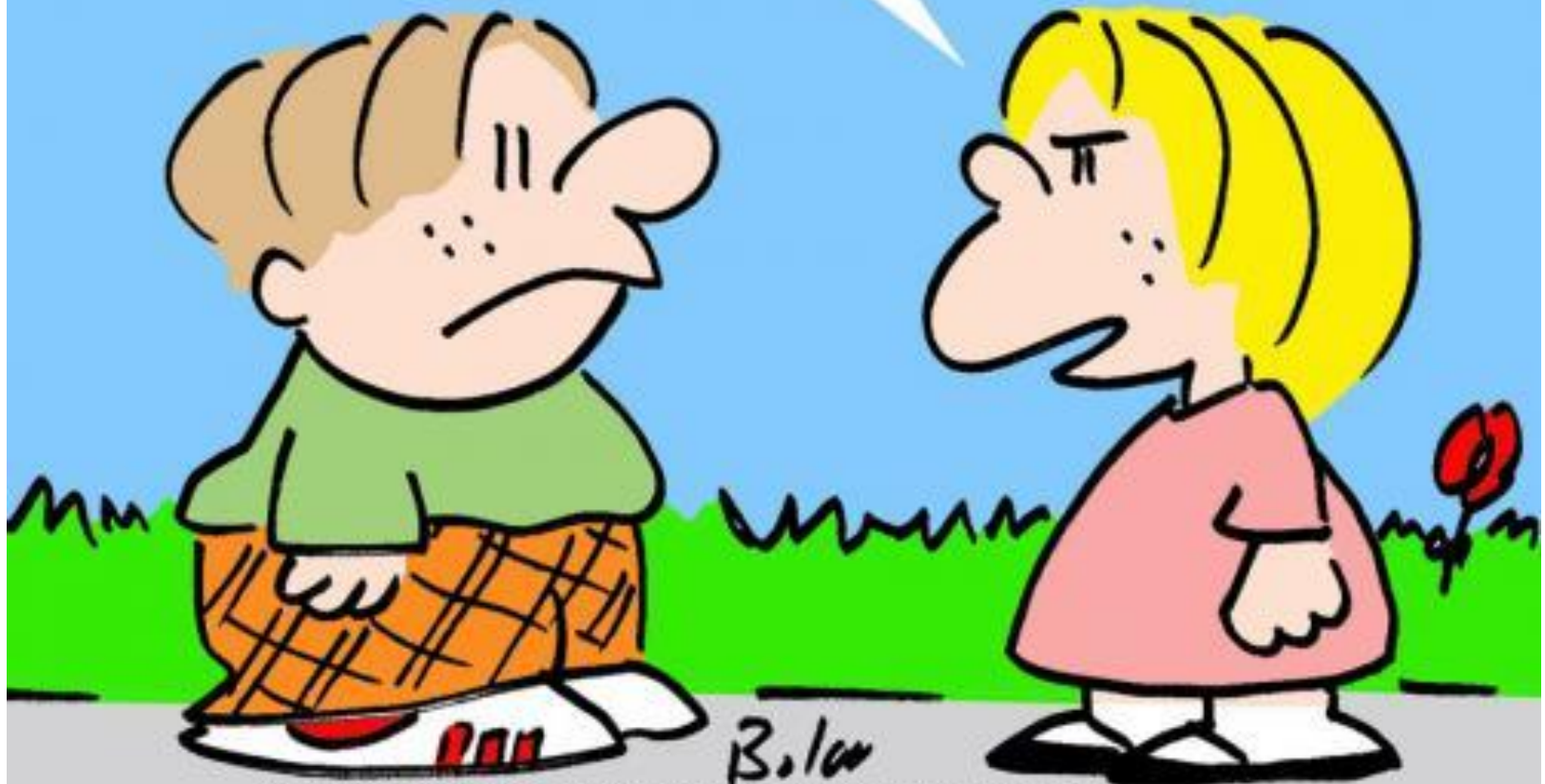
What about a Dangerous Student?

- Pursuant to 300.532, if a school believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, the school may appeal the manifestation determination decision by requesting a hearing.
- The hearing officer may return the child to the last placement or order a change of placement to an interim alternative educational setting for not more than 45 school days.
- This hearing is expedited.

What if . . .

- The school should have known the student was IDEA eligible, but failed to “find” him?
 - If the school district had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred, the child can invoke the protections of Part B.
- Basis of knowledge: The school will be deemed to have knowledge if:
 - The parent expressed concern in writing to an administrator or teacher of the child,
 - The parent requested an evaluation, or
 - The teacher expressed specific concerns to an administrator.

YOU DIDN'T GET PAROLED FROM SCHOOL,
DUMMY – YOU GOT **EXPELLED!**



Advocacy Tips . . .



"Well, I want to become a lawyer,
but I keep passing all my lie detector tests!"

Advocacy Tips . . .

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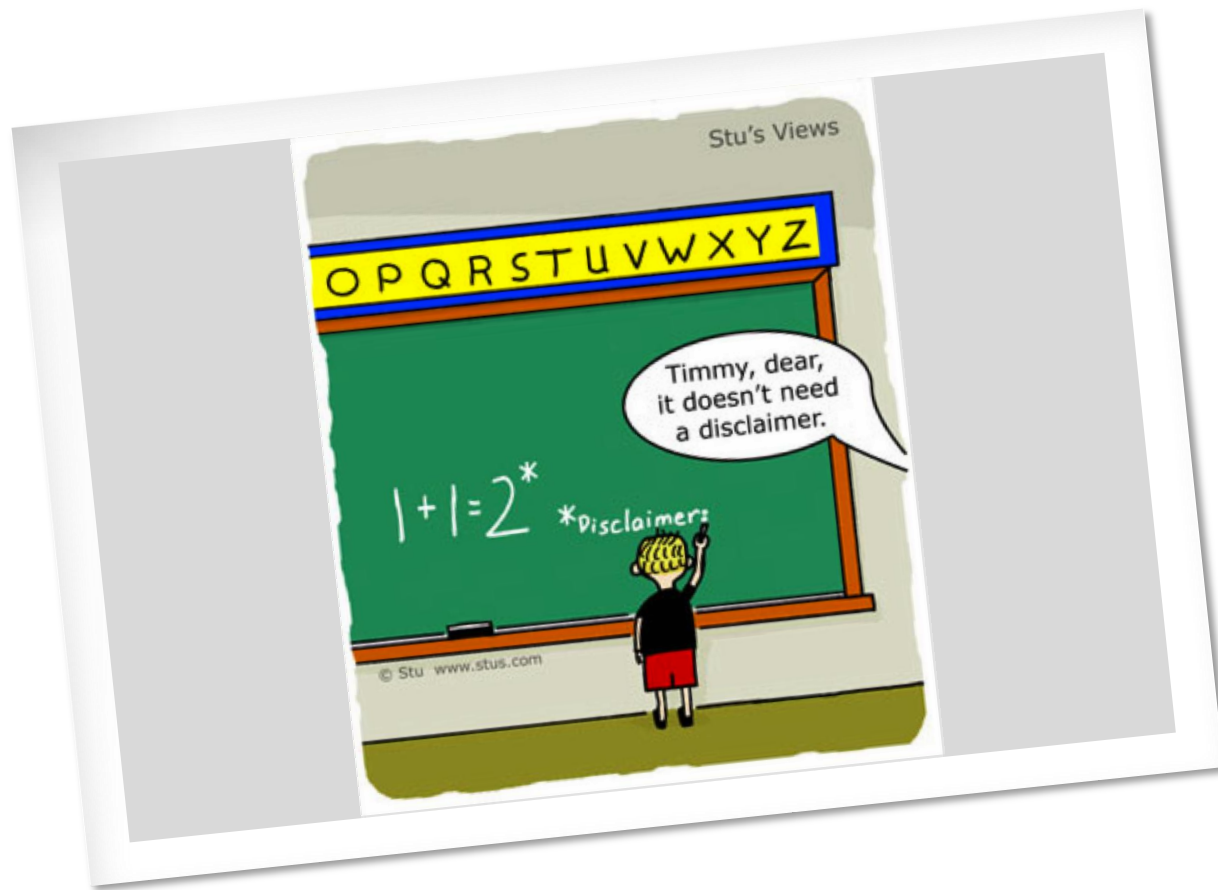
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"Maybe my dad can't whip your dad, but he's very litigious!"

Advocacy Tips . . .



In the future, please say “I object” rather than “that’s total bullshit.”



Thank you!



QUESTIONS?